PUBLIC PROSECUTOR v. PHANG SWEE LAN

[C. A. (Thomson C.J., Hill and Good JJ.A.) April 18, 1960]

[K. L. — F.M. Criminal Reference No. 2 of 1960]

Local Authority — Building operations by unlawful occupier of state land without approval of Municipal Councillors — Municipal Ordinance (S.S. Cap. 133), s.144(10)(a) and (12) — Misconceived prosecution.

This was an appeal from the Magistrate's Court by way of reference under the provisions of section 34 of the Courts Ordinance, 1948. The decision in the appeal to the High Court has already been reported at p. 6 *ante*. This appeal was brought under a certificate given by the learned appellate Judge that the appeal involved a point of law as to whether the effect of section 144(12) of the Municipal Ordinance as applied in the Malay States by virtue of the Municipal (Extended Application) Ordinance, 1948 is to preclude the Municipal Councillors from proceeding under the provisions of section 144(10) against the owner of the building who commences building operations contrary to the provisions of section 144 (7) by making the owner of the land solely responsible at law for the breach of the provisions of subsection (7) aforesaid.

Held: the proceedings were entirely misconceived. There was not a scrap of evidence that the respondent did anything in the way of commencing or carrying on building operations, and it was also clear that in no sense of the word was she the owner of the property in question. Therefore, in no circumstances could she have been convicted of an offence under section 144(10). The learned Magistrate was therefore right in finding her not guilty and discharging her.

Decision of the High Court, p. 6 *ante*, reversed.

Cases referred to:—

(1) *Lim Beng Teck* v. *R.* [1957] M.L.J. 21.

(2) *Tindall* v. *Wright*, 27 Cox C.C. 212, 217.

COURT OF APPEAL; Criminal Reference.

Peter Hall (on a *fiat* from the Public Prosecutor) for the appellant.

G. K. M. Mohan for the respondent.

Thomson C.J. (delivering oral judgment): The truth is that these proceedings are entirely misconceived.

It may well be that there is room for controversy as to the construction of section 144(10)(a) of the Municipal Ordinance as read with sub-section (12) of that section. It may be that where building operations are commenced there is room for controversy as to the criminal liability of the various persons concerned. In particular there may well be room for controversy as to whether the party who is guilty of a criminal offence under the section is the party who commits the actual *factum delicti* or is the owner of the land on which the building is erected. There may be controversy indeed as to whether both these persons are not guilty of some sort of criminal offence.

Again, the case of *Lim Beng Teck* v. *Reg.*[1] which is the judgment of a single Judge of the Supreme Court of the Colony of Singapore may or may not have been properly decided.

None of these questions, however, arises in the present proceedings. I am not overlooking anything the Magistrate has found but on the evidence it is quite clear that the present respondent has not done anything whereby on any reading of the law criminal liability can be imposed upon her. There is not a scrap of evidence, indeed there is evidence to the contrary, that she did anything in the way of commencing or carrying on building operations. It is also clear that in no sense of the word was she the owner of the property in question. Therefore in no circumstances could she have been convicted of an offence under section 144(10).

It follows then that the Magistrate was right in finding her not guilty and discharging her although we may be unable to commend the reasoning by which he arrived at that conclusion. The order of this Court will be that the appeal against the Magistrate's finding is dismissed.

I should not depart from the case without referring to the case of *Tindall* v. *Wright*[2]. That was an appeal by way of case stated which raised two distinct questions. Counsel for the appellant conceded that the first question was concluded against him by a previous decision of the Court but stated that both parties desired a decision on the second question. The Court declined to consider the question and Lord Howart C.J., observed (at p. 217) that if they were to enter upon the problem "however attractive it may be":—

> "we should be offering a decision, at the request of the parties, which would be essentially in the nature of an *obiter dictum* and would not be binding upon any other court. ..... No doubt it does seem a little flaw on the first view of the matters in which the parties upon the one side and upon the other side desire that a particular problem should be solved — although the case from which it arises is disposed of in another way — that this Court should refrain from entering on the inquiry and giving a decision. But ..... the decision so given might easily lead not to enlightenment but the embarrassment for those who have to consider a similar problem afterwards."

Reference answered.

Solicitors: *Shearn Delamore & Co., Cheah Theam Swee & Co.*

Re SYED AHMED ALSAGOFF, DECD.,

[O.C.J. (Tan Ah Tah, J.) April 20, 1960]

[Singapore — Original Summons No. 37 of 1957]

Trust and Trustee — Will — Trustee of Will appointed director of company holding lease of trust property — Trust estate holding no shares in company, but lease giving power to lessor to appoint director of company — Remuneration — Whether trustee liable to account to trust estate — Whether trustee entitled to additional remuneration — Whether director's fees to be refunded should be regarded as capital or income.

This was an originating summons taken out to determine, *inter alia*, certain questions relating to the payment of director's fees to Mr. Phillips, a trustee of the Will of the deceased, who was appointed a director of Raffles Hotel, Ltd., which company held a lease of premises forming part of the trust estate. Clause 14 of the lease gave the lessor power to appoint a director, not subject to retirement by rotation, to sit on the company's board of directors. By article 77 of Articles of Association of the Company Mr. Phillips was deemed to have been appointed pursuant to that power.